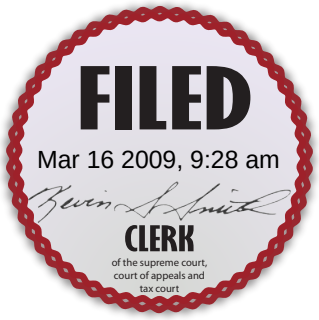

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IN THE
COURT OF APPEALS OF INDIANA

EDWARD C. FLICK,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 69A05-0808-CV-477
	)	
SUSAN C. FLICK	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE RIPLEY CIRCUIT COURT
The Honorable Carl H. Taul, Judge
Cause No. 69C01-0701-DR-004

March 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Appellant, Ed Flick, appeals from the trial court's decree of dissolution of his marriage to Appellee, Susan Flick. Ed presents five issues for our review:

1. Did the trial court abuse its discretion in awarding sole legal and physical custody of the parties' minor child, C.F., to Susan?

2. Did the trial court abuse its discretion in imputing income to Ed after finding him to be voluntarily underemployed?

3. Did the trial court abuse its discretion in ordering Ed to pay one-half of C.F.'s private, parochial school tuition?

4. Did the trial court abuse its discretion in deviating from the Indiana Parenting Time Guidelines in setting Ed's parenting time with C.F.?

5. Did the trial court abuse its discretion in dividing the marital assets and liabilities?

Susan cross-appeals, presenting one issue for our review:

6. Did the trial court abuse its discretion in finding her in contempt and in ordering her to pay $500 toward Ed's attorney's fees?

We affirm in part, reverse in part, and remand.

Ed and Susan were married on May 17, 1986. One child, C.F., was born to the marriage on March 17, 2000. The Flicks lived together on a farm in Sunman, Indiana until December 11, 2006, when Susan moved out of the marital residence, taking C.F. with her. Susan filed a petition for dissolution of her marriage to Ed on January 3, 2007. Both Ed and Susan sought custody of C.F., with Susan being awarded provisional custody of C.F. during the pendency of the proceedings and Ed receiving parenting time in accordance with the Indiana Parenting Time Guidelines. In June 2007, Susan and C.F. moved to California, Kentucky, which is approximately one hour and twenty minutes away from the home in Sunman where Ed still resides.

The final hearing began on May 1, 2008, and concluded on May 20, 2008. The trial court entered a decree of dissolution on July 11, 2008, in which the court awarded sole legal and physical custody of C.F. to Susan, set the amount of child support Ed is to pay, established Ed's parenting time schedule with C.F., and divided the marital assets and liabilities. The trial court also found Susan in contempt for violating provisional orders regarding Ed's parenting time with C.F.

1.

Ed argues that the trial court abused its discretion in awarding sole legal and physical custody of C.F. to Susan. In an initial custody determination, both parents are presumed equally entitled to custody. *Kondamuri v. Kondamuri*, 852 N.E.2d 939 (Ind. Ct. App. 2006). A trial court's custody determination is afforded considerable deference as it is the trial court that sees the parties, observes their conduct and demeanor, and hears their testimony. *Id.* Thus, on review, we will not reweigh the evidence, judge the credibility of witnesses, or substitute our judgment for that of the trial court. *Id.* We will reverse the trial court's custody determination only if it is clearly against the logic and effect of the facts and circumstances or the reasonable inferences drawn therefrom. *Id.*

In making a custody determination, Ind. Code Ann. § 31-17-2-8 (West, Premise through 2008 2nd Regular Sess.) instructs the trial court as follows:

> The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:
>
> (1) The age and sex of the child.

(2) The wishes of the child's parent or parents.
(3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
(4) The interaction and interrelationship of the child with:
(A) the child's parent or parents;
(B) the child's sibling; and
(C) any other person who may significantly affect the child's best interests.
(5) The child's adjustment to the child's:
(A) home;
(B) school; and
(C) community.
(6) The mental and physical health of all individuals involved.
(7) Evidence of a pattern of domestic or family violence by either parent.
(8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

In awarding custody of C.F. to Susan, the trial court considered the factors set forth in I.C. § 31-17-2-8. The trial court acknowledged both Ed and Susan have a strong, loving relationship with C.F. and that C.F. loves both of his parents, and thus found that factors 2 and 3 weighed equally in favor of both parents. The trial court concluded, however, that factors 1, 4, 5, and 6 weighed in favor of Susan. Specifically, the court noted that C.F. had adjusted well to his new home and school and that he had contact with Susan's family. The trial court also noted Ed's disagreement with giving C.F. medications following his ADHD diagnosis. The trial court also identified other factors it considered in determining custody:

> [Ed] has failed to pay any child support until ordered to do so; [Susan's] care for the child is appropriate and of her first concern; [Ed] uses guilt to control the child's behavior; [Ed] uses inappropriate discipline with the child; [Ed] has little or no contact with his family.

Appellant's Appendix at 7. The trial court further found that Ed and Susan were not "capable of engaging in communication necessary to sustain joint legal custody." *Id*.

Ed argues that the trial court's custody determination is against the logic and effect of the facts and circumstances of this case. Ed's argument is based upon his claim that the trial court's custody determination was influenced by the testimony of Dr. Edward Connor, a Kentucky psychologist who was retained to conduct a child custody evaluation. Ed maintains that the trial court should not have relied on Dr. Connor's opinion because Dr. Connor was biased against him.

At the final hearing, Dr. Connor testified as to the manner in which he conducted the custody evaluation. Dr. Connor explained that he conducted psychological testing of Ed, Susan, and C.F., interviewed the parties, and observed Ed and Susan interact with C.F. in their natural environment. Upon completion of his custody evaluation, Dr. Connor submitted a report of his findings, dated July 16, 2007, to the court. Dr. Connor's testimony at the final hearing tracked the findings in his report. Ultimately, Dr. Connor recommended that Susan be awarded custody of C.F.

In support of his argument that the trial court should not have relied upon Dr. Connor's report, Ed directs us to testimony of Laura Ellsworth, a psychologist Ed hired to critique Dr. Connor's report and to give the court further insight. Ms. Ellsworth testified that she reviewed Dr. Connor's report and conducted her own custody evaluation.[1] Ms. Ellsworth

[1] Susan did not participate in the evaluation performed by Ms. Ellsworth. Ms. Ellsworth was thus unable to render an opinion regarding Susan.

explained to the court that she shared some of Ed's concerns about bias in Dr. Connor's report, pointing out inconsistencies and unequal treatment of Susan and Ed. Ms. Ellsworth ultimately testified that Dr. Connor's report indicated that there was "a very strong bias" against Ed and that it appeared to be "a very unbalanced type of evaluation." *Transcript* at 202. Ms. Ellsworth further testified that she perceived Ed differently than Dr. Connor, specifically noting that there was a deep attachment between Ed and C.F., that Ed properly cared for C.F., that C.F. wanted to spend more time with his father, and that Ed's parenting skills were appropriate.

Ed's argument is simply a request that we reweigh the evidence and judge the credibility of the witnesses; specifically, the credibility of Dr. Connor and Ms. Ellsworth. As we noted above, we afford considerable deference to the trial court's determination in this regard. Here, the trial court had before it Dr. Connor's evaluation and testimony and Ms. Ellsworth's critique thereof, in addition to Ms. Ellsworth's own opinions as to custody that were based on her interviews and observations with only Ed and C.F. We further note that the trial court heard testimony from both Ed and Susan regarding the issue of custody. The trial court even commented that it found Ed's claims that Susan created frequent problems and interfered with his visitation "not to be credible". *Appellant's Appendix* at 7.

In light of the evidence presented, the trial court considered the factors found in I.C. § 31-37-2-8 and determined that Susan should be awarded sole legal and physical custody of C.F. The trial court was in the best position to make such determination upon observing the conduct and demeanor of the parties and hearing their testimony. Having reviewed the

record, we find no abuse of discretion in the trial court's assessment of the factors to be considered in making a custody determination. Ed has not established that the trial court's decision to award sole physical and legal custody of C.F. to Susan is against the logic and effect of the facts and circumstances or the reasonable inferences drawn therefrom.

2.

Ed argues that the trial court abused its discretion in imputing income to him after finding that he was voluntarily underemployed. During the marriage, Ed worked for Meyer Dairy, delivering milk to schools. Ed's schedule kept him away for much of the week, but he had weekends and summers off. In January 2008, Meyer Dairy informed Ed that it was changing his route to a weekend route that was going to require him to work every weekend. Because working weekends would interfere with his visitation with C.F., Ed quit his job with Meyer Dairy. Ed obtained new, part-time employment as a school bus driver, working three hours a day, nine months of the year. As a bus driver, Ed earns approximately $11,000 a year, a reduction of nearly 70% of the salary he earned in 2007 (nearly $40,000) working for Meyer Dairy. Based on these facts, the trial court found that Ed was voluntarily underemployed. The trial court therefore imputed income to Ed equivalent to the gross wage he was earning at Meyer Dairy for purposes of calculating Ed's child support obligation.

The Child Support Guidelines provide that if a parent is voluntarily underemployed, the trial court must calculate child support by determining the parent's potential income. Ind. Child Support Guideline 3(A)(3). Potential income is to be determined upon the basis of "employment potential and probable earnings level based on the obligor's work history,

occupational qualifications, prevailing job opportunities, and earnings levels in the community." *Id*. The purpose for including potential income is to "discourage a parent from taking a lower paying job to avoid the payment of significant support." Child Supp. G. 3(A), cmt. 2c.

The trial court enjoys broad discretion in imputing income to a parent so that the parent cannot evade a support obligation. *Glover v. Torrence*, 723 N.E.2d 924 (Ind. Ct. App. 2000). We also recognize, however, that there are circumstances in which a parent is unemployed or underemployed for a legitimate purpose other than avoiding child support and in those circumstances, there are no grounds for imputing income. *See Abouhalkah v. Sharps*, 795 N.E.2d 488, 491 (Ind. Ct. App. 2003) (holding that trial court erred in imputing income to a father who had left his job and was now earning less because "[a] parent who chooses to leave his employment rather than move hundreds of miles away from his children is not voluntarily unemployed or underemployed. Instead, he is a loving parent attempting to do the right thing for his children"); *In re Paternity of E.M.P.*, 722 N.E.2d 349 (Ind. Ct. App. 2000) (reversing trial court's finding that father was voluntarily underemployed where he left his job as a garbage collector to take a less physically demanding position).

We acknowledge Ed's claims that he did not leave his job to avoid paying child support and that he had a legitimate reason for quitting his job with Meyer Dairy in that his new schedule would significantly interfere with his visitation with C.F. While this is one factor a trial court can consider in determining whether to impute income to an underemployed parent (i.e., that a parent is not seeking to avoid a child support obligation),

this does not preclude the trial court from imputing income to the underemployed parent. To be sure, the Guidelines also direct the trial court to consider the following in determining whether to impute income:

> When a parent has some history of working and is capable of entering the work force, but voluntarily fails or refuses to work or to be employed in a capacity in keeping with his or her capabilities, such a parent's potential income should be determined to be a part of the gross income of that parent. The amount to be attributed as potential income in such a case would be the amount that the evidence demonstrates he or she was capable of earning in the past.

Commentary, Ind. Child Supp. G. 3.

Here, the trial court clearly considered Ed's work history.[2] Further, Ed does not claim that he cannot work and indeed, testified that he planned on obtaining additional employment. There is no evidence in the record that Ed has attempted but was unable to obtain more gainful employment or that he is unable to work full-time for some legitimate reason. Under these circumstances, we conclude that the trial court did not abuse its discretion in finding Ed to be voluntarily underemployed and in imputing income to him at a level Ed had demonstrated he was capable of earning. *See Turner v. Turner*, 785 N.E.2d 259 (Ind. Ct. App. 2003) (holding that trial court did not abuse its discretion in finding father to be voluntarily underemployed where father worked only part-time, but had the skill and ability to work full-time based on his prior work history).

[2] The court noted Ed's income with Meyer Dairy during his last four years in its employ: in 2004 Ed earned $40,299.00; in 2005 Ed earned $54,000.00; in 2006 Ed earned $33,000.00; and in 2007 Ed earned $39,832.00. In his brief, Ed explains that in 2006 he was unable to work full-time because of shoulder surgery.

3.

Ed argues that the trial court abused its discretion in ordering him to fund half of C.F.'s private, parochial school tuition. Specifically, he contends that his financial situation does not permit him to fund private school tuition and further asserts that he was not consulted about the school in which Susan enrolled C.F.

Ind. Code Ann. § 31-16-6-2 (West, Premise through 2008 2nd Regular Sess.) provides that a trial court may include in a child support order, amounts attributable to a child's elementary education:

> The child support order or an educational support order may also include, where appropriate:
>
> (1) amounts for the child's education in elementary and secondary schools and at postsecondary educational institutions, taking into account:
>
> (A) the child's aptitude and ability;
>
> (B) the child's reasonable ability to contribute to educational expenses through:
>
> (i) work;
>
> (ii) obtaining loans; and
>
> (iii) obtaining other sources of financial aid reasonably available to the child and each parent; and
>
> (C) the ability of each parent to meet these expenses; . . . .

The commentary to Ind. Child Supp. G. 6 provides as follows regarding elementary school tuition:

> If the expenses are related to elementary or secondary education, the court may want to consider whether the expense is the result of a personal preference of one parent or whether both parents concur; if the parties would have incurred the expense while the family was intact; and whether or not education of the same or higher quality is available at less cost.

Here, the trial court noted that C.F. had attended a private, parochial school in Indiana, while Ed and Susan were married. When Susan and C.F. moved to California, Kentucky, Susan enrolled C.F., now in the second grade, at Saints Peter & Paul School, a parochial school that had programs similar to the school C.F. had attended in Indiana. The court concluded that the parties were in agreement that C.F. would attend a parochial school, and the trial court ordered that Ed and Susan share equally the costs associated therewith. Because Susan paid the entirety of the costs associated with private schooling in the amount of $3400.00 for the 2007-2008 school year, the trial court ordered Ed to reimburse Susan $1700.00 for his share within 90 days of the date of the decree.[3]

Ed is correct in asserting that the trial court should consider a parent's ability to pay when deciding whether to enter an educational support order. Ed has failed, however, to demonstrate that the trial court did not take his ability to pay into consideration. The trial court clearly demonstrated that it considered the financial situations of the parties. Based on Ed's prior work history, the trial court concluded that with his part-time employment as a school bus driver, which reduced his income by over 70%, Ed was voluntarily underemployed and therefore imputed income to Ed. We have upheld the trial court's determination in this regard. As we noted above, there is no evidence in the record that Ed has attempted but was unable to obtain more gainful employment or that he is unable to work full-time for some legitimate reason. Implicit in the trial court's dissolution decree is that the

[3] With regard to C.F.'s aptitude and ability, Susan testified that C.F. is doing "really good" in school, that his grades are continually going up, and that his teacher constantly notes that he is doing a "great job." *Transcript* at 85.

trial court concluded Ed has the ability to pay half of C.F.'s private school tuition if he would obtain employment at the level he is capable of working. We find no abuse of discretion in the trial court's order that Ed pay half of C.F.'s private school tuition.

4.

Ed argues that the trial court abused its discretion in granting him less parenting time than that provided for in the Indiana Parenting Time Guidelines.

There is a presumption that the Indiana Parenting Time Guidelines are applicable in all cases covered by the Guidelines. *Scope of Application, subsection 2; see also Shelton v. Shelton*, 840 N.E.2d 835 (Ind. 2006). Any deviation from the Guidelines by either the parties or the court must be accompanied by a written explanation indicating why the deviation is necessary or appropriate in the case. *Shelton v. Shelton*, 835 N.E.2d 513 (Ind. Ct. App. 2005) (aff'd by 840 N.E.2d 835 (Ind. 2006) (citing *MacLafferty v. MacLafferty*, 829 N.E.2d 938 (Ind. 2005)).

In the dissolution decree, the trial court set forth Ed's parenting time as follows:

> Alternate weekends from Friday at 6:00 p.m. through Sunday at 6:00 p.m.; alternate weeks during the summer vacation with the child to be with [Susan] the week following school dismissal and the week prior to the commencement of school; holiday parenting time shall be in accordance with the following schedule: [Susan] – New Year's Day from 12:00 noon, Mother's Day, Independence Day, Thanksgiving Day, Christmas Eve and [Susan's] birthday. [Ed] – New Year's Eve, Martin Luther King, Jr.'s birthday, President's Day, Columbus Day, Memorial Day, Father's Day, Weekend after Thanksgiving from Friday at 5:00 p.m., Christmas Day from noon until December 26 at 6:00 p.m., [Ed's] birthday. Spring Break will rotate equally or divide if [Ed] is off work. Labor Day will rotate with [Ed] having odd numbered year. During the school year, [Ed] shall be entitled to one mid-week visitation from 5:00 p.m.

> through 8:00 p.m., such parenting time to take place on Wednesdays unless otherwise agreed by the parties. [Ed] shall transport the child from [Susan's] residence for visitation. [Susan] shall transport the child from [Ed's] residence following visitation.

Appellant's Appendix at 8. In setting forth the parenting time schedule, it appears as though the trial court followed the recommendation of Dr. Connor, rather than the Ind. Parenting Time Guidelines.

Under the Guidelines, each parent is given the opportunity to have the child on every holiday by alternating years. Ind. Parenting Time Guideline, Section II(D). As noted by Ed, the parenting time listed in the decree deprives him of ever seeing C.F. on Independence Day, Thanksgiving Day, or Christmas Eve. Ed would only see C.F. on holidays such as Halloween or C.F.'s birthday if such fell on his scheduled weekday visit or weekend. With regard to summer vacation, the Guidelines give some discretion to the non-custodial parent as to scheduling parenting time while maintaining that the non-custodial parent has parenting time for half of the summer vacation. Ind. Parenting Time Guidelines, Section II(B). The trial court ordered Ed and Susan to alternate weeks, but allocated the first and last weeks to Susan, rather than ensuring the summer was equally split by permitting Ed to choose consecutive weeks during the summer. With regard to Christmas break, the Guidelines allow the non-custodial parent half of the time the child is off of school. Ind. Parenting Time Guidelines, Section II(D). The trial court awarded Ed one day of the Christmas break outside of his regularly scheduled parenting time.

In setting forth parenting time that differs from the Ind. Parenting Time Guidelines, the trial court did not provide a written explanation indicating why the deviation is necessary

or appropriate in this case. Additionally, Susan does not dispute that the trial court's parenting time schedule is not in accordance with the Ind. Parenting Time Guidelines, and concedes that Ed should be awarded parenting time in accordance therewith. We therefore reverse that part of the trial court's order setting forth parenting time for Ed, and remand for entry of an order setting forth parenting time in accordance with the Ind. Parenting Time Guidelines.

5.

Ed argues that the trial court abused its discretion in dividing the marital assets and debts. Specifically, Ed maintains that the trial court failed to include items in the marital pot, overvalued an item of personal property, and impermissibly ordered him to pay a mortgage to both the bank and to Susan. Ed therefore asserts that the net result is the trial court's failure to render an equitable division of the marital property.

Indiana Code § 31-15-7-5 (West, Premise through 2008 2nd Regular Sess.) governs the distribution of marital property and provides as follows:

> The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:
>
> (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
>
> (2) The extent to which the property was acquired by each spouse:
>
> (A) before the marriage; or
> (B) through inheritance or gift.

> (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
>
> (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
>
> (5) The earnings or earning ability of the parties as related to:
>
> (A) a final division of property; and
> (B) a final determination of the property rights of the parties.

The foregoing statute creates a rebuttable presumption that an equal division of the marital property of the parties is just and reasonable. *Akers v. Akers*, 729 N.E.2d 1029 (Ind. Ct. App. 2000). The distribution of marital property is committed to the sound discretion of the trial court. *Breeden v. Breeden*, 678 N.E.2d 423 (Ind. Ct. App. 1997). A party who challenges the trial court's division of marital property must overcome a strong presumption that the court considered and complied with the applicable statute. *Wanner v. Hutchcroft*, 888 N.E.2d 260 (Ind. Ct. App. 2008).

In the decree of dissolution, the trial court expressly stated its intention to equally divide the marital estate. Ed argues that despite the trial court's stated intention, the trial court committed several errors that rendered the division unequal.

Ed argues that the trial court failed to provide for distribution of a $3,000 certificate of deposit (CD) that he and Susan acquired for C.F.'s benefit. Ed states that he does not intend to deprive C.F. of this money, but asserts that "without proper distribution of this asset, Ed has no ability to ensure that the money will go to C.F." *Appellant's Brief* at 28. Susan agrees

that the trial court should have made provision for the CD in C.F.'s name and that it should have done so in the same manner it addressed C.F.'s checking account, i.e., in the dissolution decree, the trial court referenced a checking account in C.F.'s name and provided that "[s]uch account is in the name of the parties' child and shall remain his separate asset." *Appellant's Appendix* at 16. On remand, the trial court should clarify its classification of this asset.

Ed argues that the trial court abused its discretion in evenly dividing the rental income on the parties' duplex without taking into account expenses "within the common knowledge of any homeowner", such as property taxes, upkeep, and insurance. *Appellant's Brief* at 28. Ed maintains that by failing to take into account those expenses, the trial court gave Susan a windfall by giving her more than her fair share of rental income that was received by Ed during the separation period. Ed, however, did not request that an adjustment be made and, further, presented no evidence to the trial court regarding expenses associated with the property. We therefore conclude that the trial court did not err in evenly dividing the rental income from the parties' duplex without making provision for expenses Ed now claims he incurred.

Ed also points out that the trial court, although setting a 1990 Honda Civic off to him, failed to take into consideration the amount of money he expended repairing it. Upon separation, Susan took the 1990 Honda Civic with her. A few months later, Susan informed Ed that she had been in an accident and that the vehicle was at an auto repair shop. In addition to the accident damage, the vehicle also had some mechanical problems. As part of the dissolution decree, the trial court awarded the vehicle to Ed. Ed maintains, without

citation to authority, that the trial court should have accounted for the amount ($1172.00) it cost to repair the mechanical problems and body damage.

We begin by noting that costs for repairs are incidental to ownership of a vehicle and do not necessarily serve to decrease the value of an item. Further, we note that there is no evidence regarding the nature of the mechanical or body damage or how it impacted the value of the vehicle. Indeed, Ed does not challenge the value the trial court placed on the vehicle ($1250.00). Ed is simply seeking a credit for sums he expended in repairing the car. Ed has cited no authority in support of his argument. The trial court was well within its discretion in deciding to not give Ed credit for sums he expended in fixing the 1990 Honda Civic.

Ed also takes issue with the fact that the trial court assessed $2000.00 against his half of the marital estate for a guitar that he claims was valueless. In Susan's Exhibit 6, Susan lists personal property and household items acquired during the marriage. Included on the list was a reference to "Guitars". *Exhibits* at 83. Susan testified that the items in Exhibit 6 had no value. In Susan's Exhibit 7, Susan lists items of personal property and provides her and Ed's opinion as to the value of those items. Listed as a miscellaneous item is "Guitar w/ accessaries [sic]". *Id*. at 86. Susan provided a value for this item of $2000. Ed did not list the item as an item of value. The trial court, in dividing the personal property, awarded this item at a value of $2000 to Ed. At no time did Ed object to inclusion of the guitar with Susan's listed value as an item of personal property. Without an objection or claim that the guitar valued at $2000 was inaccurate or duplicative of other items listed as valueless, the

trial court could very well have concluded that the "Guitar w/ accessaries [sic]", *id*., valued at $2000 was separate from the "Guitars", *id*. at 83, identified as valueless. Ed has not established that the trial court abused its discretion in setting off to him the "Guitar w/ accessaries [sic]" valued at $2000. *Id*. at 86.

Finally, Ed argues that the trial court abused its discretion in dividing the Flex-Line mortgage with Fifth Third Bank. As of the date of separation, the Flex-Line mortgage had a balance of $16,683.83. This amount included $3500 Susan withdrew from the account just prior to filing for divorce. Susan stipulated that such liability should be set off to her. After the date of filing, Ed withdrew from the account $12,200. In dividing the marital estate, the trial court apparently treated these withdrawals as assets of the marriage and determined each party was entitled to one-half of the total withdrawals. Acknowledging Susan's prior withdrawal, the court ordered Ed to pay Susan $4,350 to "balance the equities".[4] *Id*. at 17. The trial court also treated the Flex-Line mortgage as a liability and ordered Ed to assume the financial obligation of the entire Flex-Line mortgage ($16,683.83). Susan concedes that the trial court's order requires Ed to pay her and Fifth Third Bank the same funds. On remand, the trial court is directed to correct this duplication and to make adjustments, if necessary, to the distribution of marital assets.

[4] We are confused by the trial court's treatment of the Flex-Line mortgage as both an asset and liability of the marriage. We further question the trial court's inclusion of the full-amount of the liability in the marital pot, noting that "debts incurred by a party after the dissolution petition has been filed are not to be included in the marital pot." *Augspurger v. Hudson*, 802 N.E.2d 503 (Ind. Ct. App. 2004). Here, the evidence demonstrates that Ed made his withdrawals from the account after the petition for dissolution was filed.

In her brief, Susan notes a few typographical and mathematical errors in the trial court's dissolution decree. For example, the trial court lists Susan's Fifth Third Bank Profit Sharing Plan as having a value of $212,784.41, when it actually has a value of $212,748.41. Susan further notes that the trial court erroneously lists Ed's wedding ring, valued at $1,000, twice. On remand, we direct the trial court to correct these errors and to make adjustments to the division of marital property if appropriate.

6.

Susan cross-appeals, challenging the trial court's determination that she was in contempt and ordering her to pay $500 toward Ed's attorney's fees. Specifically, the court found as follows:

> 7. Contempt: [Susan] testified that she unilaterally adopted the parenting time recommendations of Dr. Connor's report without requesting such from this Court and in violation of the provisional orders. The Court finds that [Susan] is in contempt of court and sanctions her by ordering her to pay [Ed's] attorney's fees for the Motion of Contempt in the amount of Five Hundred Dollars ($500.00).

Appellant's Appendix at 6.

Whether a person is in contempt of a court order is a matter left to the trial court's discretion. *Mitchell v. Mitchell*, 785 N.E.2d 1194 (Ind. Ct. App. 2003). We will reverse the trial court's finding of contempt only where an abuse of discretion has been shown, which occurs only when the trial court's decision is against the logic and effect of the facts and circumstances before it. *Id*. When we review a contempt order, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.*

Indirect contempt is the "willful disobedience of any lawfully entered court order of which the offender has notice." *City of Gary v. Major*, 822 N.E.2d 165 (Ind. 2005); *see also* Ind. Code Ann. § 34-47-3-1 (West, Premise through 2008 2nd Regular Sess.). Generally, contempt of court involves the disobedience of a court which undermines the court's authority, justice, and dignity. *Id*. (citing *Hopping v. State*, 637 N.E.2d 1294 (Ind. 1994)).

Susan maintains that she did not willfully disobey a court order, directing us to her testimony that she followed the advice of her attorney to extend Ed parenting time in accordance with the schedule set forth in Dr. Connor's custody evaluation upon its submission to the court. Susan does not deny that she stopped following the Ind. Parenting Time Guidelines without the court's permission. The evidence further demonstrates that at least on one occasion, Susan failed to provide Ed with parenting time that was provided for under the schedule in the Connor custody evaluation with no apparent explanation. On this record, we cannot say that the trial court abused its discretion in finding Susan in contempt for "unilaterally adopt[ing] the parenting time recommendations of Dr. Connor's report" without the court's prior approval, in violation of the provisional orders.[5] *Appellant's Appendix* at 6.

Judgment affirmed in part, reversed in part, and remanded.

MAY, J., and BRADFORD, J., concur

[5] Even if Susan's conduct did not constitute contempt, the trial court would have been within its discretion to award Ed attorney's fees to cover the cost of his seeking to enforce the court's order that his parenting time was to be in accordance with the Ind. Parenting Time Guidelines. *Cf. Heagy v. Kean*, 864 N.E.2d 383 (Ind. Ct. App. 2007) (finding no prejudice in trial court's failure to find mother in contempt of court order where court ordered mother to pay a portion of father's attorney fees), *trans. denied*.